

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

NATIONAL WILDLIFE REFUGE ASSOCIATION,)
DRIFTLESS AREA LAND CONSERVANCY, WISCONSIN)
WILDLIFE FEDERATION, and DEFENDERS OF WILDLIFE)
)
Plaintiffs,)
)
v.)
)
RURAL UTILITIES SERVICE,) Nos. 21-cv-00096-wmc
CHRISTOPHER MCLEAN, Acting Administrator, Rural) & 21-cv-00306-wmc,
Utilities Service,) Consolidated.
UNITED STATES FISH AND WILDLIFE SERVICE,)
CHARLES WOOLEY, Midwest Regional Director, and)
SABRINA CHANDLER, Manager, Upper Mississippi River)
National Wildlife and Fish Refuge,)
UNITED STATES ARMY CORPS OF ENGINEERS,)
LIEUTENANT GENERAL SCOTT A. SPELLMON, Chief of)
Engineers and Commanding General, U.S. Army Corps of)
Engineers, COLONEL STEVEN SATTINGER, Commander)
and District Engineer, Rock Island District, U.S. Army Corps of)
Engineers, and COLONEL KARL JANSEN, Commander and)
District Engineer, St. Paul District, U.S. Army Corps of)
Engineers,)
Defendants,)
and)
AMERICAN TRANSMISSION COMPANY, LLC,)
DAIRYLAND POWER COOPERATIVE, & ITC)
MIDWEST LLC,)
Intervenor-Defendants.)

**PLAINTIFFS' STATEMENT OF PROPOSED FACTS IN SUPPORT OF MOTION
FOR INJUNCTION PENDING APPEAL**

Plaintiffs submit these Proposed Findings of Fact in Support of Plaintiffs' Motion for Injunction Pending Appeal pursuant to this Court's local Procedure to be Followed on Motions

for Injunctive Relief. The Proposed Facts are supported by the attached and cited evidence. All docket cites are to the docket in Case No. 21-cv-00096 unless otherwise noted.

Overview of CHC Transmission Line and Environmental Review

1. The Cardinal-Hickory Creek transmission line (“CHC Transmission line”) would run 102 miles from the Hickory substation near Dubuque, Iowa to cut a wide swath through the Upper Mississippi River National Wildlife and Fish Refuge (“the Refuge”), and plow through the southwest Wisconsin Driftless Area’s scenic landscapes, family farms, small town communities, and vital natural resources before reaching the Cardinal substation in Middleton, Wisconsin. ROD004976.
2. The CHC transmission line will have 17-20 story high towers. ROD005121.
3. The CHC transmission line would cut a 260-foot wide right-of-way through the Refuge near Cassville, Wisconsin. ROD007573.
4. The CHC transmission line’s river crossing at the Refuge is over a mile away from a smaller existing line’s crossing, the right-of-way width is almost doubled, and the towers will be 20 stories high at the Mississippi River crossing. ROD007569–74.

Environmental Impacts of the CHC Transmission Line

5. The proposed path of the CHC line will run through the iconic Driftless Area, a unique and fragile landscape of hills and deep river valleys, left unglaciated by the last Ice Age. ROD005137.
6. The Driftless Area is a “truly unique landscape, rich in natural resources and well-known and appreciated for its natural scenic beauty,” which contains many rare woodland, prairie, and

riparian habitats. The Driftless Area is home to numerous endangered and threatened species, and includes many coldwater trout streams and high-quality wetlands. ROD006786.

7. According to the USFWS, the Refuge “is a Wetland of International Importance and a Globally Important Bird Area.” ROD005454–56.
8. The Upper Mississippi River National Wildlife and Fish Refuge is the gem of Midwest Refuges and is a recognized Wetland of International Importance. ROD005454-56.
9. The Refuge encompasses the Mississippi Flyway, a migration route used by 40% of North America’s waterfowl. ROD005169, ROD005454.
10. The scenic Driftless Area’s unique and beautiful landscape of hills and deep river valleys is a vibrant outdoor recreation tourism destination, boosting the regional economy, and it contains waterways, woodland, prairie, and riparian habitat for many rare wildlife and fish species. ROD005121, ROD005137, ROD006802.
11. USFWS has explained that “right-of-way projects,” like large transmission lines, result in irreparable environmental harms: loss of wildlife habitat, propagation of invasive species, contaminated stormwater runoff and erosion, bird strikes, lost recreational opportunities, and aesthetic harm. FWS00533-35.

Ongoing Construction

12. The Transmission Companies have continued construction of the CHC transmission line since this Court’s final judgment. Exh. B to Declaration of Jaworski.
13. In April 2022, ITC began drilling and power tower foundations. Exh. B to Declaration of Jaworski.

14. ATC plans to haul, set, and frame tower structures in May, and begin stringing lines in June or July 2022. Exh. B to Declaration of Jaworski.
15. The Transmission Companies have spent \$276 million thus far on the project, including \$115 million in the First Quarter of 2022 alone. Exh. B to Declaration of Jaworski.
16. On May 20, 2022 the Transmission Companies informed the Public Service Commission of Wisconsin that they expect the final project to exceed the initial price tag of \$492 million by over 10%. Exh. C to Declaration of Jaworski.
17. As of today, the Transmission Companies can not even estimate the final cost of the project. Exh. C to Declaration of Jaworski.
18. The Companies have stated they intend to begin bulldozing through the Refuge in October 2022. Dkt. 184.
19. The Transmission Companies have asserted that they can build the Project through the Refuge along the right-of-way of the existing lower-voltage transmission lines without needing to get any permission from the Refuge Managers or the U.S. Fish and Wildlife Service. Dkt. 183 at 13 n. 8.

Harms to Plaintiffs' Members and Their Interests

20. Plaintiff Driftless Area Land Conservancy (“DALC”) is a nonprofit land trust and conservation organization dedicated to protecting sensitive lands, vital conservation areas, scenic landscapes, historic properties, and natural resources in Wisconsin’s Driftless area. Dkt. 101 at ¶ 2.
21. Dena Kurt is a member of DALC and Wisconsin Wildlife Federation (“WWF”) and a silent sports enthusiast who uses the Upper Mississippi National Wildlife and Fish Refuge where

the Cardinal-Hickory Creek transmission line would be built for activities like canoeing and cross-country skiing. Decl. of Kurt at ¶¶ 1-4.

22. Ms. Kurt enjoys experiencing the quiet, solitude, and beauty of the natural word and viewing native plants and wildlife, including birds and mussels. Decl. of Kurt at ¶¶ 3-5.

23. Ms. Kurt spends an hour in the Refuge each day, and has observed the accelerated pace of construction in recent months. Decl. of Kurt at ¶¶ 18, 20.

24. Ms. Kurt has already observed severe environmental damage in the Refuge simply based on construction proximate to the Refuge in both Iowa and Wisconsin. Ms. Kurt's treasured solitude has been disrupted by construction and the operation of two new substations on each side of the river. Decl. of Kurt at ¶ 21.

25. Ultimately, construction of the transmission line has impacted how often Ms. Kurt will visit the Refuge in the future. Decl. of Kurt at ¶ 25.

26. Susan Anderson is a DALC member who has lived in Southwestern Wisconsin her entire life. Decl. of Anderson at ¶¶ 1-2.

27. Her family owns a farm near Beetown in Grant County. The CHC transmission line cuts directly through her family property. Decl. of Anderson at ¶¶ 3,6.

28. During the first week of January 2022, the easement through Ms. Anderson's property was cut. Decl. of Anderson at ¶ 7

29. Ms. Anderson is concerned about the effects of erosion on the bluffs on and near her property. Decl. of Anderson at ¶ 22.

30. The construction process has been stressful for Ms. Anderson and her family. They are concerned about bald eagles which currently nest on their property, as well as disturbances to Native American burial sites on and near her property. Decl. of Anderson at ¶ 26.

31. Barbara Peckarsky is a DALC member who lives in Cross Plains, Wisconsin. Decl. of Peckarsky at ¶¶ 1-2.
32. Ms. Peckarsky is a professor emeritus of the Departments of Entomology and Ecology and Evolutionary Biology at Cornell University and an honorary fellow in the Department of Integrative Biology and an Adjunct Professor in the Department of Entomology at the University of Wisconsin Madison. Decl. of Peckarsky at ¶ 3.
33. Ms. Peckarsky lives near and recreates around the Black Earth Creek Watershed. Decl. of Peckarsky at ¶ 4.
34. Ms. Peckarsky has observed the severe environmental damage that the clearcut of the headwaters of Black Earth Creek has wrought on the ecosystem. Decl. of Peckarsky at ¶ 8.
35. Ms. Peckarsky is concerned about the lack of tree cover and erosive effects of clearcutting for the sensitive headwaters of Black Earth Creek and its affect on the riparian ecosystem. Decl. of Peckarsky at ¶¶ 9, 15.
36. Tim White is a DALC member who lives in Mount Horeb, Wisconsin and serves as a Mount Horeb village trustee. Decl. of White at ¶¶ 1-2.
37. He is an avid pedestrian and bicyclist along the Military Ridge State Trail which follows close by the right of way for the CHC transmission line. Decl. of White at ¶ 3.
38. On May 24, 2022, while on a bike ride on the Trail, Mr. White observed the Companies installing a new tower for the CHC line. Decl. of White at ¶ 8-9, Exhibit A.
39. Mr. White finds the continued construction of the CHC transmission line frustrating for many reasons, including the cost to ratepayers, the decline in land values in the community, the fact that any problems solved by the CHC line could be accomplished in a more cost effective way, and the extensive ecological damage. Decl. of White at ¶ 13.

40. Brian Durtschi is a DALC member who lives in Mount Horeb, Wisconsin. Decl. of Durtschi at ¶¶ 1-2.

41. Mr. Durtschi owns an approximately 83-acre property in Mount Horeb which he purchased for its great scenic and recreational value. Decl. of Durtschi at ¶ 3.

42. Mr. Durtschi and his wife walk the property and the nearby Military Ridge State Trail several times a week. Decl. of Durtschi at ¶ 6.

43. The proposed route of the CHC transmission line goes directly through Mr. Durtschi's property. Decl. of Durtschi at ¶ 4.

44. On May 24 through May 26, 2022, Mr. Durtschi observed construction crews erecting a transmission line tower on his property and adjacent to his property. Decl. of Durtschi at ¶¶ 10-20, Exhibits A-E.

45. Mr. Durtschi views the construction of the line as a gut punch. Every time he leaves his home, what used to be a beautiful view of a wooded area, now all he sees are the huge poles. Decl. of Durtschi at ¶ 21.

46. Mr. Durtschi fears that his property is no longer the same. Having been scarred by the CHC line. He fears that the turkey and deer which used to frequent the property will no longer return. He also believes that the scenic value of the property has diminished. Decl. of Durtschi at ¶¶ 22-23.

Expert Analysis of the CHC Transmission Line

47. Citizens Utility Board expert Mary Neal testified before the Wisconsin Public Service Commission, in a proceeding on the Commission's approval of the CHC line, that "Applicants have greatly overstated the wind-related benefits of the Project" and that such

benefits are “highly speculative,” and that the project would induce a net increase in coal generation, according to her modeling and analysis. ROD006926, ROD006937–38.

48. Conservation Groups expert Rao Konidena submitted a declaration before this court which stated that “there would be no reliability threat to Wisconsin that would result from a delay in the construction schedule for the Cardinal-Hickory Creek transmission line. The CHC line is not necessary ‘to keep the lights on’ and the Applicants have overstated its benefits.” Dkt. 144 at ¶ 5

49. Conservation Groups’ expert ratemaking accountant Aaron Rothschild submitted a declaration before this court which stated, “the financing cost savings to consumers from a delay in the project may actually save them as much or more than the increased construction cost.” Moreover, any “potential increase in construction costs is highly speculative, while the financing cost savings from a delay is assured.” Dkt. 145 at ¶ 5

50. Public Service Commission of Wisconsin staff expert Alexander Vedvik testified before the Wisconsin Public Service Commission, in a proceeding on the Commission’s approval of the CHC line, that ratepayers will likely benefit economically from a construction delay. Vedvik found that in most of future scenarios modeled, delaying the transmission line’s in-service date for two years would benefit ratepayers. Dkt. 104-10.

Consumer Advocates, States, and Counties Speak Out Against the CHC Transmission Line

51. The Wisconsin Citizens Utility Board, which advocates on behalf of Wisconsin ratepayers, wrote a letter to the Dane County Circuit Court, which heard state law challenges to the CHC transmission line. The letter concluded that ratepayers would benefit if the CHC project were cancelled altogether because “each day the Utilities continue with construction is a day they

are knowingly and intentionally spending Wisconsin customer dollars not just imprudently, but recklessly.” Dkt. 146-2.

52. Dane and Iowa Counties, through which the CHC transmission line is proposed to cross, also wrote letter to the Dane County Circuit Court, which concluded that the transmission line’s costs to their constituent ratepayers would substantially exceed its benefits. Dkts. 146-3; 146-4.

53. The Attorneys General of Michigan and Illinois wrote an amicus brief before the Public Service Commission of Wisconsin, in a proceeding on the Commission’s approval of the CHC line, which concluded that the transmission line’s costs to their constituent ratepayers would substantially exceed its benefits. Exh. D to Declaration of Jaworski.

Plaintiff Organizations’ Financial Information

54. Plaintiff DALC is a small nonprofit organization with a limited budget. Dkt. 101 at ¶¶ 6-7.

55. Much of DALC’s revenue and funds are restricted and can only be used for limited purposes. Dkt. 101 at ¶¶ 7-10.

56. DALC would not be able to pay a large injunction bond. Dkt. 101 at ¶ 11.

57. Plaintiff Wisconsin Wildlife Federation (“WWF”) is a small nonprofit organization with a limited budget. Dkt. 103 at ¶¶ 2, 4-9.

58. Much of WWF’s revenue and funds are restricted to use for specific purposes. Dkt. 103 at ¶ 6.

59. WWF’s revenue has declined substantially due to the COVID-19 pandemic. Dkt. 103 at ¶ 8.

60. WWF relied on federal Paycheck Protection Program loans during 2020 and 2021, and these funds could not legally be used to pay for an injunction bond. Dkt. 103 at ¶ 6

61. WWF would not be able to pay a large injunction bond. Dkt. 103 at ¶ 10.
62. Plaintiff Defenders of Wildlife is a nonprofit organization that would not be able to pay a large injunction bond. Dkt. 100 at ¶ 4-8.
63. Money received by Plaintiff Defenders of Wildlife is often allocated to a specific purpose. Dkt. 100 at ¶ 5.
64. Plaintiff National Wildlife Refuge Association is a not-for-profit organization focused exclusively on protecting and promoting the 850 million-acre National Wildlife Refuge System. Dkt. 102 at ¶ 3.
65. Plaintiff National Wildlife Refuge Association is a small nonprofit organization with a limited budget, and a substantial portion of the Association's revenue is restricted funds which can only be used for limited purposes, and therefore would not be able to pay a large injunction bond. Dkt. 102 at ¶¶ 7-10.

Respectfully submitted this 31st day of May, 2022.

/s/ Howard A. Learner

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